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IN THE

Supreme Court of the United States

October Term, 1951

No. 85

IDONAH SLADE PERKINS,

Petitioner,

v.

BENGUET CONSOLIDATED MINING COMPANY,

Respondent.

RESPONSE OF PETITIONER ON RE-HEARING

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RESPONSE OF PETITIONER ON RE-HEARING

The petition of the respondent for a re-hearing is unique in that it does not ask the court to change its decision, but merely to change some language in the opinion.

Objection is taken to the summary of facts on doing business gleaned from the opinion of the Court of Appeals of Ohio in 88 Ohio App. at 119-125. The summary made by Mr. Justice Burton is a fair and accurate statement of the findings from the facts and evidence made by the Court of Appeals, and should not be disturbed.

Respondent states at the bottom of page 2 of the petition that "The Court fell into error in this situation by adopting as 'facts . . . substantially beyond controversy,' and then adds that the recital of facts was "merely a recital of the claims made as to what the facts were."

The Court of Appeals in summarizing the evidence, stated its conclusions were based on "*The facts* upon which plaintiff predicates her claim" (88 Ohio App. 119) and "on the other hand, the defendant points to the following *evidence.*" Justice Burton properly pointed out that such facts and evidence were "substantially beyond controversy." Anyone reading the record without a jaundiced eye, would come to the same conclusion.

There can be no dispute that John W. Hausserman and his family were the largest shareholders; (R. 116), that he was president, general manager and representative of Benguet in the United States, (R. 116). He even spoke of Benguet as "my baby" (R. 162). It was clear that he did have files of Benguet at New Richmond; (R. 147, 148); that he did sign purchase orders there; (R. 153-156); that the assistant secretary at his office was paid half of her salary by Benguet and half by Balatoc, a subsidiary, (R. 150-51), and that checks were transmitted and correspondence carried on from and to New Richmond (R. 147, 148). He was designated as parent of the company, and even had power of attorney from his two sons as directors, so that he could control proceedings. (R. 113-116), The purchase orders themselves, the checks and correspondence, all emanated from New Richmond, where he was also a resident. (R. 159); (R. 124). The fact is that Benguet did not suspend operations, but kept doing some business. Whatever business was done, and there was sufficient for Haussermann to draw a salary as president and general manager, all originated in New Richmond. (R. 122)

Respondent wants this court to make special findings not based on the record, and not based on the Court of Appeals findings, which Justice Burton fairly and accurately summarized. There, is, therefore, no substance in the petition for re-hearing.

Actually he is asking this court to review the findings of the Court of Appeals *de-novo,* which Justice Burton adopted and summarized. This court actually went no further than to say that the facts justified the assumption by the Supreme Court that Benguet was doing business in Ohio. It left, however, to the Supreme Court of Ohio the question whether jurisdiction would be entertained on the particular facts and circumstances in the case. No further clarification is necessary, and the cause can finally be determined in Ohio without future re-course by either side to this court, unless the Ohio court again grounds its decision on an irrelevant premise.

Of course, the more important question is the statement of the court that

> "Also without merit is the argument that merely because Ohio permits a complainant to maintain a proceeding *in personam* in its courts against a properly served non resident natural person to enforce a cause of action which does not arise out of anything done in Ohio, therefore, the Constitution of the United States compels Ohio to provide like relief against a foreign corporation."

We feel the court has not considered that statement in connection with *Hughes* v. *Fetter,* 341 U. S. 609 and *First National Bank of Chicago* v. *United Air Lines, Inc.,* (No. 349) 20 U. S. Law Week 4160. The discrimination goes somewhat deeper in this case. No matter how much business a foreign corporation does in Ohio, this court states it would be proper to exclude actions against it, unless it has appointed a statutory agent. If such be the rule, then foreign corporations can escape process merely by failing to appoint a statutory agent, and yet continually increase the volume of business in Ohio. Of course, as is indicated in footnote 2 of the opinion, such is not the law in Ohio,

but such a classification should not have sanction of this court from a constitutional standpoint.

While petitioner has not asked for a re-hearing, if there is to be one, then that paragraph should be reconsidered. We feel certain that the court will overrule petition of respondent summarily.

Respectfully submitted,

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